

EXHIBIT 138

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
Civil Action No. 4:20-cv-00957-SDJ

THE STATE OF TEXAS, et al., :
:
Plaintiffs, :
:
v. :
:
GOOGLE LLC, :
:
Defendant. :

The deposition of GUARIONEX DÍAZ MARTÍNEZ,
called as a witness by the Defendant, pursuant to
the Federal Rules of Civil Procedure, before Saul
Berrios Batista, Notary Public for the
Commonwealth of Puerto Rico, and Dennis Zambataro,
Registered Professional Reporter, commencing on
May 1, 2024 at 10:07 a.m., at the Office of the
Attorney General for the Commonwealth of Puerto
Rico, San Juan, Puerto Rico.

Job No. CS6672002

1 cannot talk about.

2 Q. Okay. Do you agree that these
3 Responses to Google's Request for Admission bind
4 the Commonwealth of Puerto Rico to the
5 responses?

6 A. Yes.

7 Q. Has Puerto Rico produced all the
8 documents in its possession, custody and control
9 concerning the harm it alleges?

10 A. The Department of Justice has
11 produced documents in discovery that were in its
12 possession, custody or control.

13 Q. Does that include harm to businesses
14 and to consumers?

15 A. What will be the full question?

16 Q. Has Puerto Rico produced all
17 documents in its possession, custody and control
18 concerning the harm to businesses and consumers
19 that Puerto Rico alleges in the complaint?

20 A. The Department of Justice has
21 produced the documents related from the
22 discovery of what was requested that were in the
23 possession, custody and control, yes.

24 Q. And Puerto Rico has not produced any
25 documents concerning any complaints that Puerto

1 Rico has received concerning Google's ad tech,
2 advertising technology, and display advertising?

3 A. That is correct.

4 Q. Why not?

5 A. Why we haven't produced?

6 Q. Yes.

7 A. There was nothing to produce.

8 Q. So Puerto Rico did not have any
9 complaints concerning Google's advertising
10 technology and display advertising; is that
11 correct?

12 A. The Department of Justice don't have
13 any complaints, no.

14 Q. Would another agency or organization
15 have those complaints?

16 MR. BATES: Objection. Calls for
17 speculation.

18 THE WITNESS: I don't know. If
19 other agency has complaints about that, I
20 don't know.

21 MS. KLEIN: Kyle, you know about the
22 Eastern District's rules about
23 objections.

24 MR. BATES: What are you referring
25 to specifically?

1 BY MS. BAYOUMI:

2 Q. But that's not on behalf of state
3 agencies or state entities; is that correct?

4 THE WITNESS: If you mean that
5 like --

6 MR. BATES: Objection to form.

7 THE WITNESS: -- proprietary damages
8 of specific state agencies, no.

9 Could you repeat the question?

10 MS. BAYOUMI: Okay.

11 BY MS. BAYOUMI:

12 Q. So the alleged harm to Puerto Rico's
13 general welfare and economy is based on
14 publishers and advertisers allegedly
15 experiencing decreased revenue, lower quality
16 and higher prices; is that correct?

17 MR. BATES: Objection to form.

18 THE WITNESS: We have designated the
19 testimony from Texas on those -- on a
20 common factual basis.

21 BY MS. BAYOUMI:

22 Q. Does Puerto Rico have a sense of how
23 widespread this impact is in the state?

24 A. Nationwide.

25 Q. But it doesn't have -- but Puerto

1 Rico doesn't have an idea of how widespread the
2 impact alleged in the fourth amended complaint
3 is in Puerto Rico?

4 MR. BATES: Objection to form.

5 THE WITNESS: I mean, besides
6 knowing that the effect of those conducts
7 were nationwide and Puerto Rico is a
8 market within -- and that seeing how the
9 Internet is ubiquitous, it is everywhere
10 in Puerto Rico, we see users of the
11 Internet and advertisers, publishers in
12 that whole of Puerto Rico, yeah.

13 BY MS. BAYOUMI:

14 Q. So as you sit here today, you can't
15 tell me how many Puerto Rican advertisers have
16 been affected by the conduct alleged in the
17 fourth amended complaint; is that right?

18 A. Right now, I don't have a specific
19 number. But I mean, discovery is ongoing,
20 expert reports is forthcoming, and we are sure
21 that the effects and the harm is nationwide.

22 Q. And as you sit here today, you can't
23 tell me how many Puerto Rican publishers have
24 been affected by the conduct alleged in the
25 fourth amended complaint; is that right?

1 A. The same question -- I mean, I
2 wouldn't have a specific number right now. But
3 the facts that are common to plaintiff states,
4 we have designated the testimony of Texas and
5 Puerto Rico, as part of the nationwide market,
6 was affected by Google's behavior.

7 Q. Can you name an advertiser in Puerto
8 Rico?

9 MR. BATES: Objection to form.

10 THE WITNESS: Can you specify the
11 question?

12 BY MS. BAYOUMI:

13 Q. Can you name an advertiser based in
14 Puerto Rico?

15 A. Is that like an advertising agency
16 or something like that?

17 Q. An ad agency would be a different
18 entity, but an advertiser specifically?

19 THE WITNESS: I mean, any -- any
20 person or entity that will -- in Puerto
21 Rico, used the Internet or tried to --
22 you know, involved in online digital
23 advertising, you know, yeah.

24 BY MS. BAYOUMI:

25 Q. Can you name an entity?

1 again, Puerto Rico don't have -- they
2 didn't do an additional investigation
3 other than the multistate investigation.
4 It's not adding factual --

5 How long -- can we take a break?
6 How long have we been here?

7 MS. BAYOUMI: We can take a break.

8 VIDEOGRAPHER: Going off the record,
9 the time is 11:16 a.m. Off the record.

10 (Short recess taken.)

11 VIDEOGRAPHER: We're back on the
12 record. The time is 11:32. This is the
13 beginning of Media Number 2. On the
14 record.

15 BY MS. BAYOUMI:

16 Q. Puerto Rico uses ad agencies for its
17 advertising; is that right?

18 A. We did at the Department of Justice,
19 yes.

20 Q. And do you know whether the
21 Department of Justice's use of ad agencies is
22 limited to digital campaigns?

23 A. Those campaigns were limited to
24 digital. I'm not -- I think one of -- there are
25 two divisions, one ran two campaigns and the

1 other one just ran one campaign.

2 So that one, which is the one
3 related with the Sexual Offenders Registry,
4 that -- it's my understanding that was limited
5 to digital.

6 Q. Okay. So you said that in total
7 there were three digital campaigns run by the
8 Department of Justice?

9 A. Yes.

10 Q. And what are those three campaigns?

11 A. Okay. The Office of Compensation of
12 Victims and Witnesses, they run two campaigns,
13 one in 2021, and the other one in 2022.

14 They were both educational campaigns
15 to inform the public about the services and
16 support, monetary support that was available to
17 them.

18 The registry, the unit, did one
19 campaign in 2023. And there was also an
20 educational campaign giving publicity to the
21 registry, which is online, it's digital; that's
22 why it was only digital, and where to locate or
23 access that registry.

24 (Reporter requests clarification.)

25 BY MS. BAYOUMI:

1 Q. And when you say "educational
2 campaigns," what do you mean by that?

3 A. To educate the public.

4 Q. So it was the goal of the campaign
5 to educate the public on a particular topic or
6 subject; is that right?

7 A. Yeah. On a particular topic or
8 subject, yeah.

9 Q. And the registry campaign that you
10 referenced, which division ran that campaign?

11 A. Okay. The System of Criminal
12 Justice Information, right, within that division
13 there is the unit that kind of is in charge of
14 the registry, the Unit of Sexual Offenders is in
15 charge of the registry.

16 Q. Do you know when that campaign was
17 run?

18 A. That one was 2023.

19 Q. And that one was a pure digital
20 advertising campaign?

21 A. I understand it was only digital,
22 yes.

23 Q. Okay. And the other two were a mix
24 of digital and non-digital?

25 A. Mostly non-digital, but it was a

1 mix, yeah, you're correct.

2 Yeah, I'm sorry. I mean mostly, it
3 was like traditional media. It included digital
4 media, but the ad tech part or the Google
5 display part was a minimal.

6 Q. What do you mean by "the ad tech
7 part was minimal"?

8 A. I mean those things were done by the
9 ad agency that was hired. So, yeah, I cannot
10 speak about that.

11 Q. What role does the ad agency play
12 for Puerto Rico's digital ad campaign?

13 A. Yeah, they will do it like -- they
14 will plan and create the campaign and execute
15 it, according to the needs, and then report
16 back.

17 Q. And when you say "report back," that
18 means the ad agency measures the performance of
19 the campaign and then provides an update to
20 whichever division is running that campaign; is
21 that right?

22 A. Yeah, they provided some reports
23 after the campaign, yeah.

24 Q. And does the ad agency also make
25 recommendations on how to pursue the campaign?

1 A. Yes.

2 Q. Does that include recommendations as
3 to which ad tech providers to use for the
4 campaign?

5 A. Yes.

6 Q. Does that also include
7 recommendations as to where the funds should be
8 spent in terms of which type of advertising
9 should be used for the campaign?

10 A. I don't understand, since they are
11 the ones who developed the plan.

12 Q. So is it fair to say that the ad
13 agency would make all strategic decisions
14 regarding the advertising campaign?

15 A. Yes.

16 Q. How does Puerto Rico decide which ad
17 agency to work with for a particular campaign?

18 A. They did a request for proposal and
19 they evaluated different proposals from
20 different ad agencies and chose the company that
21 we provided.

22 Q. What criteria did these divisions
23 use in selecting an ad agency?

24 A. Specific material they evaluate -- I
25 would have to understand the plan, you know, and